

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SARAH DREILING)	
Claimant)	
VS.)	
)	Docket No. 265,956
HAYS MEDICAL CENTER)	
Respondent)	
AND)	
)	
ROYAL & SUNALLIANCE)	
Insurance Carrier)	

ORDER

Claimant appealed the January 29, 2004 Award entered by Administrative Law Judge Bruce E. Moore. The Board heard oral argument on August 10, 2004.

APPEARANCES

Jeffrey E. King of Salina, Kansas, appeared for claimant. Melvin J. Sauer, Jr., of Hays, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award. Additionally, at oral argument before the Board, the parties agreed to the following:

1. Respondent and its insurance carrier have paid temporary total disability benefits for the 57 weeks preceding March 3, 2003, and, accordingly, no additional temporary total disability compensation is being claimed.
2. Commencing March 4, 2003, the appropriate average weekly wage for computing claimant's permanent disability benefits includes additional compensation items and, therefore, is \$422.57.

3. The letters between Judge Moore and Dr. Jane K. Drazek that are in the Division of Workers Compensation administrative files are not part of the record and, therefore, should not be considered in this claim.

ISSUES

Claimant alleges she is permanently and totally disabled as the result of slipping and falling at work on July 13, 2000, and developing either fibromyalgia or chronic pain syndrome.

In the January 29, 2004 Award, the Judge found claimant (1) failed to prove she sustained any permanent functional impairment due to her left hand and left knee, which she injured in the July 2000 accident, (2) failed to prove her fibromyalgia or chronic pain syndrome was caused by her accident at work, and (3) failed to prove her present disability was related to her July 2000 fall. Consequently, the Judge denied claimant's request for workers compensation benefits.

Claimant contends Judge Moore erred. Claimant argues the evidence is overwhelming her chronic pain syndrome or fibromyalgia was caused by her July 2000 accident, which has rendered her permanently and totally disabled. Accordingly, claimant requests the Board to grant her permanent total disability benefits and also award her ongoing medical benefits.

Conversely, respondent and its insurance carrier contend the January 29, 2004 Award should be affirmed.

The issues before the Board on this appeal are:

1. Did claimant's July 13, 2000 accident at work cause or aggravate the fibromyalgia or chronic pain syndrome that she now has?
2. What is the nature and extent of injury and disability that can be attributed to claimant's July 13, 2000 accident?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes the Award should be modified to award claimant medical benefits for the left hand and left knee injuries that claimant sustained on July 13, 2000. But the Board affirms the Judge's finding that the evidence fails to establish that the July 2000 accident either caused or aggravated the fibromyalgia or chronic pain syndrome that presently disables claimant.

The Board adopts the findings of fact as embraced in the Judge's 18-page decision. Accordingly, for purposes of this Order, the Board will condense its findings.

Claimant, who was a long-term employee, slipped and fell at work on July 13, 2000, injuring her left hand and left knee. Claimant missed little time from work. But, as she continued working for respondent, claimant experienced additional symptoms, including headaches and progressively worsening pain in both hands, arms, neck, hips and back.

Orthopedic surgeon Robert L. Bassett, M.D., treated claimant from July 2000 through mid-January 2001. According to Dr. Bassett, claimant's left hand and knee injuries resolved. The doctor attributed claimant's other symptoms to fibromyalgia, which the doctor believed had flared but had resolved.¹

In April 2001, claimant saw orthopedic surgeon Robert L. Eyster, M.D., at the respondent and its insurance carrier's request. At that visit, claimant complained of pain in her thighs, hips, arms and left thumb. Lacking positive physical findings, Dr. Eyster diagnosed multiple joint pain. According to Dr. Eyster's medical report, which was introduced at his deposition, the doctor believed claimant's fall had somewhat irritated her hips and that overuse had irritated her right elbow. Dr. Eyster did not believe claimant had fibromyalgia.

The record is not entirely clear but it appears claimant saw a Dr. Villarante during the spring or summer of 2001 approximately four times for treatment of her fibromyalgia or chronic pain syndrome symptoms.

After a period of time without any medical treatment, claimant saw Dr. Jane K. Drazek in October 2001. After being authorized, Dr. Drazek began treating claimant and in January 2002 restricted claimant from working. That is the last time that claimant worked anywhere.

In February 2003, claimant saw Dr. Paul S. Stein to be evaluated for purposes of this claim. Dr. Stein diagnosed claimant as having a chronic pain syndrome that he felt may have been some form of fibromyalgia.

Respondent and its insurance carrier then sent claimant back to Dr. Bassett to be evaluated. Dr. Bassett examined claimant in July 2003 and concluded claimant had florid symptoms of fibromyalgia and that she was severely depressed.

¹ Bassett Depo. at 38.

1. Did claimant's July 13, 2000 slip and fall at work cause or aggravate the fibromyalgia or chronic pain syndrome that she now has?

Judge Moore concluded the greater weight of the evidence established that claimant's fibromyalgia, if it existed as a disorder, was unrelated to the trauma she sustained in her July 13, 2000 fall.

As indicated above, the medical experts are divided whether claimant has fibromyalgia, some form of fibromyalgia, or joint pain from trauma. Dr. Eyster concluded claimant did not have symptoms of fibromyalgia, which he believes is caused by depression. On the other hand, Dr. Bassett, who was claimant's treating physician, concluded claimant had fibromyalgia but it was not related to the July 2000 accident. According to Dr. Bassett, fibromyalgia is probably associated with stress and the lack of sleep. Only Dr. Stein related claimant's fibromyalgia and chronic pain syndrome symptoms to the July 2000 accident. But Dr. Stein failed to explain how injuries to claimant's left hand and left knee evolved into injuries and symptoms in both upper extremities, neck, back and hips.

The Board concludes claimant has failed to prove her fibromyalgia or chronic pain syndrome was caused or aggravated by her July 2000 accident.

2. What is the nature and extent of injury and disability that can be attributed to claimant's July 13, 2000 accident?

Judge Moore concluded claimant injured her left hand and left knee in her July 2000 accident. The Judge, however, denied claimant permanent disability benefits for those injuries as the evidence failed to establish claimant sustained any permanent functional impairment to either her hand or knee.

According to Dr. Eyster, claimant did not need any restrictions due to the July 2000 accident and he found no need to assign any impairment rating under the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment*. Similarly, Dr. Bassett determined claimant required no work restrictions as a result of the July 2000 accident as all of claimant's left hand and left knee symptoms resolved.² And Dr. Stein did not assign a functional impairment rating to either the hand or knee.³

² Bassett Depo. at 16.

³ Stein Depo. at 20.

The Board finds no reason to disturb the Judge's conclusion that claimant failed to prove she sustained any permanent impairment due to the July 2000 accident.

AWARD

WHEREFORE, the Board affirms the January 29, 2004 Award entered by Judge Moore to the extent that it denied claimant workers compensation benefits for either fibromyalgia or chronic pain syndrome. But the Board modifies the Award to make clear that claimant was entitled to receive workers compensation benefits for the left hand and left knee injuries only that she sustained on July 13, 2000.

The Board affirms the Judge's orders regarding payment of the administrative costs.

IT IS SO ORDERED.

Dated this ____ day of August 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Jeffrey E. King, Attorney for Claimant
Melvin J. Sauer, Jr., Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director